

In The
Supreme Court of the United States
October Term, 1988

UNITED GAS PIPE LINE COMPANY,

v.

Petitioner,

LOUISIANA POWER & LIGHT COMPANY,

Respondent.

On Petition For Writ of Certiorari To The
Louisiana Court of Appeal, Fourth Circuit

OPPOSITION TO MOTION FOR LEAVE
TO FILE BRIEF AMICUS CURIAE

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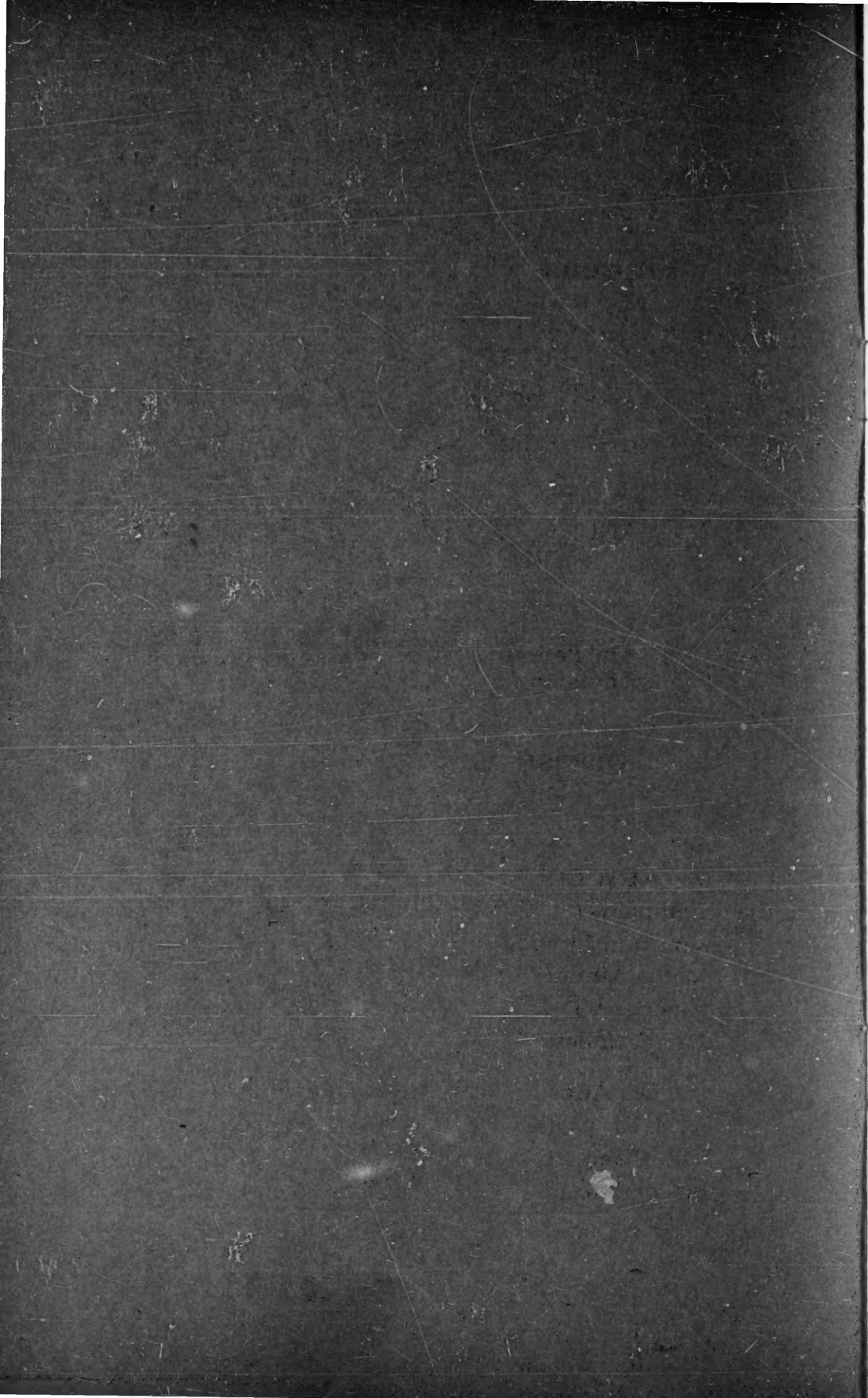
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October 7, 1988

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No. 88-191

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UNITED GAS PIPE LINE COMPANY,
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LOUISIANA POWER & LIGHT COMPANY,
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NOW COME Respondents, Louisiana Power & Light Company ("LP&L"), Louisiana Public Service Commission, and City of New Orleans, and state their Opposition to the Motion of Interstate Natural Gas Association of America ("INGAA") for leave to file Brief Amicus Curiae, for the following reasons:

On August 2, 1988, counsel for Respondent LP&L received a letter, dated July 28, 1988, from Mr. John H. Cheatham, III, an attorney for INGAA, who stated that his organization desired to file a brief in support of

petitioner, United Gas Pipe Line Company. United is a member of INGAA, as is MidCon Corp., one of the wholly-owned subsidiaries of Occidental Petroleum Corporation that will actually pay any judgment in this case. (Petition at ii.)

Counsel for LP&L stated its opposition to this request, as did counsel for other Respondents. (A copy of LP&L's letter to INGAA stating this opposition is attached.)

Despite this Court's rule that an amicus brief in such circumstances is not favored (Rule 36.1), INGAA nevertheless filed a motion for leave with attached amicus brief on September 27, 1988, contemporaneously with the filing of Respondents' Briefs in Opposition to the Petition. By filing on the same date that Respondents filed their briefs with the Court, INGAA has deliberately deprived Respondents of an opportunity to respond to INGAA's erroneous arguments. Although INGAA's filing on the Respondents' date may be within the letter of Rule 36.1 as presently written, the Court's prior rule required such a Brief to be filed at "a reasonable time" prior to the consideration of the petition by the Court. Respondents understand this still to be the intent of the rule. *See, Stern & Gressman, Supreme Court Practice*, 6th Ed., p. 395. INGAA's time of filing is not reasonable and was chosen by INGAA to prejudice Respondents. This Court should not countenance such sharp practice.

INGAA was not a party to any of the United litigation, state or federal, and specifically cannot claim to be familiar with the extensive record of United's fault which the Petition seeks to bring to this Court. The policy

arguments of INGAA, however, were made to the Federal Energy Regulatory Commission, and rejected by it in Opinion No. 248, *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. (CCH) ¶ 61,043 (1986) and in Opinion No. 248-A, *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. (CCH) ¶ 61,340 (1986). INGAA's same arguments made on appeal in that case were also rejected by the United States Court of Appeals for the D.C. Circuit. *Transcontinental Gas Pipe Line Corp. v. FERC*, No. 86-1358 (D.C. Cir. order entered Feb. 16, 1988, order on rehearing entered April 22, 1988) (Resp.App. B at 3a). Those decisions are final, and INGAA should not be allowed to seek their review in the guise of amicus here.

Respectfully submitted,

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October 7, 1988

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APPENDIX

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#7126-1132-H-3

Mr. John H. Cheatham, III
Senior Vice President and General Counsel
Interstate Natural Gas Association of America
1660 L Street, N.W.
Washington, D.C. 20036

Re: United Gas Pipe Line Company v.
Louisiana Power & Light Company

Dear Mr. Cheatham:

We are in receipt of your letter dated July 28, 1988, requesting LP&L's consent to allow INGAA to participate as *amicus curiae* in the proceedings in the United States Supreme Court provoked by a Petition for Certiorari filed in the name of "United Gas Pipe Line Company."

As we discussed on the telephone, LP&L is unable to grant such consent and we are returning, as you requested, your letter unsigned.

Permit me to again state our disappointment that the Interstate Natural Gas Association of America chooses to interject itself in this matter. United's judgment liability

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has been assumed by others, and, in any event, the poor performance of United in the 1960's and 1970's which led to its liability is common knowledge in the industry. It is unfortunate that your association has decided to waste its resources defending the indefensible.

Yours truly,
/s/ Terrence G. O'Brien
Terrence G. O'Brien

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July 28, 1988

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New Orleans, Louisiana 70170-3300

RE: *United Gas Pipeline Company v. Louisiana Power & Light Company*, S.Ct. No.____, October Term, 1988, Petition for Certiorari.

Dear Mr. O'Brien:

The Interstate Natural Gas Association of America ("INGAA"), is a national trade association representing virtually all interstate natural gas transmission companies doing business in the United States. Pursuant to Rule 36 of the Rules of United States Supreme Court, 28 U.S.C., I am requesting you consent to allow INGAA to participate, *amicus curiae* in the referenced case. Please indicate your consent by signing the signature block below, and return this letter to me in the enclosed stamped self-addressed envelope. In the event that you do not consent to our participation, please return the letter to me unsigned.

Sincerely,
/s/John H. Cheatham, III
John H. Cheatham, III
Senior Vice President
and General Counsel

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On behalf of Louisiana Power & Light Company, I hereby consent to the full participation of the Interstate Natural Gas Association of America in the referenced case.

(handwritten) Consent Refused
/s/ Terrence O'Brien

INTERSTATE NATURAL GAS ASSOCIATION
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TELEPHONE 202/293-5770
